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done, and the parties proceed with the new trial, objection cannot thereafter be made either in the trial court or the appellate court that the costs have not been paid.

2. **NEW TRIAL**.—*Motion in trial court—exception.* The Court of Appeals will not review the judgment of an inferior court unless it appears that a motion for a new trial was made in the trial court and was overruled and exception taken, but it is not necessary that a formal bill of exceptions should be taken to the action of the trial court in overruling the motion for a new trial. It is sufficient if the facts otherwise appear from the record.

3. **ACTUAL COST OF LAND**.—*Promoters' profits.* A clause in a prospectus of a company stating that "it proposes to take and hold the properties desired, paying therefor actual cost," means that the company was to pay the actual price paid for the land to the owners thereof, excluding therefrom all profits to promoters.

4. **PROMOTERS**.—*Fiduciary relation—profits—assent of company.* Promoters of a corporation stand in a fiduciary relation to the corporation, and are not allowed to make a profit out of the corporation on the property purchased for it, unless, with full knowledge of all the facts, it is assented to by the corporation.

5. **PRINCIPAL AND AGENT**.—*Profits of agent—promoters' profits.* An agent to buy or sell, or to act in any other business, will not be permitted to make profits for himself out of the transaction. All profits or advantages made, or contracted for by him in the business, beyond the ordinary compensation to be paid by his principal, inure to the benefit of his principal. And this rule applies equally to promoters of a corporation who, like agents, occupy a fiduciary relation to the new corporation.

MILLER BY &C. V. MILLER.—Decided at Staunton, October 8, 1895.

Cardwell, J :

1. **RES JUDICATA**.—*How established.* The defense of *res judicata*, made by answer, is sufficiently supported by the production of the record of the former suit between the same parties, touching the same matter, and showing a final decree therein on the merits.

2. **CHANCERY PRACTICE**.—*Decree on merits silent as to demurrer.* If the decree disposing of the main issue of the cause makes no mention of the demurrer, the demurrer will be regarded as overruled.

3. **DIVORCE**.—*Adultery—how to be charged.* A bill for divorce *a vinculo*, on the ground of adultery, which simply charges that the defendant "has been guilty of adultery on many occasions," is bad on demurrer. While the name of the person with whom the adultery was committed need not be stated, the bill should state time, place, and circumstances, so as to enable the defendant to disprove the charge.

4. **ALIMONY**.—*Discretion of court.* The amount of alimony to be decreed is within the sound discretion of the trial court, to be fixed according to established principles, and upon an equitable view of all the circumstances of the particular case.